

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

**ORIGINAL**

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**JUN 25 1996**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Amendment of Section 73.606(b)  
Table of Allotments,  
Television Broadcast Stations  
(Marquette, Michigan)

RM No. \_\_\_\_\_

**DOCKET FILE COPY ORIGINAL**

**PETITION FOR RULEMAKING**

For more than two years, the Commission's comparative hearing process has been stalled, precluding the resolution of any competing applications for new television services. One piece of lumber in this logjam is the proceeding to license a television station at Channel 19 in Marquette, Michigan, for which six applicants have applied. In order to break this logjam, Scanlan Television, Inc. ("Scanlan"), the initial applicant for Channel 19, hereby petitions the Commission to initiate a rulemaking to allot a new channel to Marquette to allow Scanlan to amend its pending application for Channel 19.<sup>1</sup>

As discussed more fully below, Scanlan requests that it be granted cut-off protection for this new channel, consistent with Commission precedent, and would not oppose similar petitions for additional channel allotments from any of the other applicants for Channel 19. This proposal would allow Scanlan to provide Marquette, the largest city in Michigan's Upper Peninsula, with its *second* commercial television service (also the second non-satellite commercial

<sup>1</sup> As discussed further below, Scanlan proposes that the Commission, pursuant to its authority in section 73.606(b) of its Rules, 47 C.F.R. 73.606), amend the Table of Allotments for television broadcast stations allot one of the following available channels to Marquette: Channels 28, 39, 47, 51, 57 or 60.

Joey  
MMB

service in the whole of Michigan's Upper Peninsula), while at the same time resolving the mutually-exclusive applications without favoring any one applicant.

## **I. BACKGROUND**

Both Marquette and the Upper Peninsula are starkly underserved markets suffering from lack of television service. Marquette, the home to Northern Michigan University with 8,800 students, is a city of 21,977 persons in a county with a population of 70,100, yet it has only one commercial television service.<sup>2</sup> The Upper Peninsula is an area nearly twice the size of the State of Maryland, but has been allotted only 12 channels, compared to Maryland's 19.<sup>3</sup>

On January 11, 1996, Scanlan filed an application proposing a full-service television station for UHF Channel 19 in Marquette. No television station has ever operated on Channel 19; the only construction permit ever issued for a station on that channel was dismissed in 1994.<sup>4</sup> Despite the lack of interest in Channel 19, after Scanlan's filing, five other competing applications were filed by the cut-off date of April 5, 1996. The six applications for Channel 19 are currently pending before the FCC, which lacks any process for resolving the mutual exclusivity short of the allotment of new channels for each applicant.

## **II. ALLOTMENT OF ADDITIONAL CHANNELS TO MARQUETTE IS CONSISTENT WITH COMMISSION PRECEDENT**

Scanlan's proposal to allot new channels to Marquette to resolve the mutual exclusivity created by the five additional applications filed for Channel 19 is in accord, both legally

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<sup>2</sup> The only commercial television service in Marquette is WLUC-TV. Marquette also receives local television service from WNMU-TV (a non-commercial station). The only other commercial service available in Marquette is satellite station WJMN-TV, Escanaba, Michigan, which retransmits the out-of-state signal of WFRV-TV, Green Bay, Wisconsin.

<sup>3</sup> Table of Allotments, C.F.R. 47 § 73.606.

<sup>4</sup> Channel 19 was allotted for commercial use in Marquette more than 26 years ago. A construction permit was issued to Upper Peninsula Telecasting Corp. in 1989, which was dismissed in 1994.

and factually, with past Commission practice in light of the freeze on the comparative hearing process. As the Commission has found in the past, the public interest is not served by allowing applications for new television services to languish while the Commission decides how, when and whether to reinstate its comparative hearing process.

Until late 1993, the Commission resolved mutually-exclusive applications for new broadcast services by holding comparative hearings. While at times laborious and inefficient, the process eventually resulted in a license being awarded to a single applicant, who would presumably construct and operate the station as proposed.

In 1993, however, the comparative hearing process came to a screeching halt. In the case *Bechtel v. FCC*,<sup>5</sup> the U.S. Court of Appeals for the District of Columbia Circuit invalidated the comparative hearing process on the grounds that, in violation of the Administrative Procedure Act, it had not been promulgated by a notice-and-comment rulemaking. Shortly thereafter, the FCC stayed all comparative hearings indefinitely.<sup>6</sup> The Commission has done nothing to revive the process since.

The freeze on comparative hearings has not, however, completely precluded the Commission from resolving mutually-exclusive applications, such as those filed for Channel 19 in Marquette. Instead of allowing the applications to remain unprocessed, the Commission has allotted new channels to the community of license, granting cut-off protection to the existing applicants. The Commission thereby has avoided the comparative hearing process and permitted the prompt initiation of new services.

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<sup>5</sup> 10 F.3d 875 (D.C. Cir. 1993).

<sup>6</sup> See *Reexamination of the Policy Statement on Comparative Broadcast Hearings*, 9 F.C.C. Rcd. 2821 (1994) (Second Notice of Proposed Rulemaking).

Last year, the Commission used this method to resolve competing applications for Channel 18 and expedite competitive television service in Albion, Nebraska.<sup>7</sup> In 1993, the Commission allotted Channel 18 to Albion and Channel 8 to Lincoln, Nebraska.<sup>8</sup> The allotments were made to allow Citadel Communications Company, Ltd. ("Citadel") to move its existing station Channel 8 from Albion to Lincoln -- providing Nebraska's capital with only its second commercial television service -- while replacing the Albion station using Channel 18.<sup>9</sup> After the allotment, Citadel promptly filed its application to construct a station at Channel 18 in Albion. On the cut-off date, Fant Broadcasting Company of Nebraska, a competitor of Citadel's, filed a competing application for Channel 18.<sup>10</sup> The *Bechtel* decision was released soon thereafter, and the comparative hearing process was suspended, delaying the new services to both Lincoln and Albion.

More than one year after the competing application was filed, the Mass Media Bureau recognized that without resolution of the mutual exclusivity, the plans for a second commercial station in Lincoln might never materialize. *Sua sponte*, the Bureau allotted Channel 24 to Albion and granted Citadel cut-off protection to allow it to amend its Channel 18 application to specify operation on that channel.<sup>11</sup> The Bureau noted that in the event a new applicant expressed

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<sup>7</sup> *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations, (Albion, Nebraska)*, 10 F.C.C. Rcd. 11927 (1995) ("Albion II").

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* The Order allotting channel 18 to Albion and changing the community of license of Citadel's KCAN from Albion to Lincoln conditioned the move of KCAN to Lincoln upon Citadel's promise to construct a replacement station in Albion. *Id.* at 11927-28.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

an interest in constructing a station in Albion, it was prepared to allot Channel 40 to accommodate that interest.<sup>12</sup>

The full Commission granted Citadel's application for Channel 24, endorsing this creative resolution of the competing applications.<sup>13</sup> The comparative hearing freeze did not impede the proper result; the Commission found that "the public interest would be served by permitting Citadel Communications to amend its pending application for Channel 18 . . . without loss of cut-off protection . . . and [to] permit the prompt institution of additional service to Albion."<sup>14</sup> The Commission found irrelevant the argument that the allotment of a second channel to Albion made no economic sense.<sup>15</sup>

The public interest benefits of this proposal for Marquette are as compelling as those presented in Albion and Lincoln. A new station will not only increase the diversity of media voices and viewer choices, but will also provide competition to the only commercial television station in Marquette. Allotting one of the at least six available UHF channels to Marquette will allow at least one, if not more, stations to serve the heart of the Upper Peninsula.<sup>16</sup>

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<sup>12</sup> *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations, (Albion, Nebraska)*, 9 F.C.C. Rcd. 3183, n.1 (1995) ("Albion I").

<sup>13</sup> *Albion II*, 10 F.C.C. Rcd. at 11927-28.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, citing *Albion I*, 9 F.C.C. Rcd. 3183 (1995). The staff had noted that economics are "not relevant in either a licensing or allotment context." *Id.*, citing *Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 F.C.C. Rcd. 638 (1988). *recon. denied*, 4 F.C.C. Rcd. 2276 (1989).

<sup>16</sup> As was the case in Albion, there are a multitude of channels available for allotment to Marquette. Specifically, with Channel 19, there are enough channels available for allotment to each of the applicants for Channel 19 and at least one additional channel should any party or parties without cut-off protection express interest in a station to service the area.

Like Albion and Lincoln, Marquette currently suffers from an acute lack of television service, from which no one -- except perhaps WLUC -- benefits. The Commission has long recognized the public interest advantages of increased competition, which the allotment of Channel 24 brought to Albion and Lincoln, and which additional allotments would bring to Marquette and the entire Upper Peninsula. Without competition, advertisers pay higher fees than necessary, and incentives for diversifying programming are marginal. The advent of competition not only expands consumer choice and increases diversity, but it also spurs incumbents to improve their service. The Commission has consistently supported the idea that "right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection,"<sup>17</sup> and has therefore made it a priority to provide each community with at least two television stations.<sup>18</sup> This policy has not yet made its way to the Upper Peninsula of Michigan.

No interested party will be left out in the cold by Scanlan's proposal. Like in Albion, the Commission has available enough unallotted channels to provide cut-off protection for each existing applicant for Channel 19, with at least one unallotted channel remaining for any other interested party. The attached Technical Statement demonstrates that television stations can serve Marquette from at least six different UHF channels, four without restricted site locations.<sup>19</sup> Scanlan respectfully requests that the Commission allot one of these channels to Marquette -- and

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<sup>17</sup> *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943), *aff'd* 326 U.S. 1 (1945).

<sup>18</sup> *Sixth Report and Order*, 41 F.C.C. 148 (1952).

<sup>19</sup> See Technical Statement of Wayne S. Reese, dated June 24, 1996, attached hereto as Exhibit A.

it expresses no preference at this time for any one of those channels -- to allow Scanlan to amend its application for a new television service in Marquette.<sup>20</sup>

And, as in Albion, the Commission should not be persuaded by any objections to the economic feasibility of this proposal. Scanlan believes that it can construct and operate a competitive television service in Marquette, and the Commission need look no further. The economic impact of an allotment upon licensees or prospective applicants is "not relevant in either the licensing or allotment context."<sup>21</sup>

### III. CONCLUSION

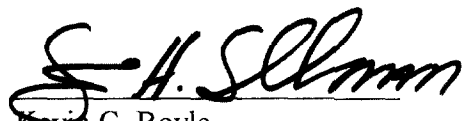
Scanlan is committed to constructing and operating a television station in Marquette immediately. If this petition and Scanlan's amended application for construction are granted, Scanlan commits to a prompt initiation of television service to Marquette. The public interest will be served by the immediate commencement of service to Marquette, not by the logjam that currently exists at Channel 19.

Dated: June 25, 1996

Respectfully submitted,

SCANLAN TELEVISION, INC.

By:

  
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<sup>20</sup> Scanlan does request that the channel allotted be available for use at the transmitter site proposed in its application for Channel 19. Scanlan would not object to a solution that would allow it to construct and operate a station on Channel 19, consistent with its pending application.

<sup>21</sup> *Albion I*, 9 F.C.C. Rcd. at 3183.

**A**



## EXHIBIT A

05-14-1996

E.H. Munn Jr. &amp; Assoc.

517 278-7339

CH# 28- (Primary)

MARQUETTE MI AVAILABLE CHANNEL STUDY

INTERFERENCE CHECKS WITH NEW MARQUETTE AT N. LAT. 46 33 0 W. LNG. 87 23 36

ZONE = 2

PWR = 5000 K.W. H.A.A.T = 600 M

CH#	CALL	ZONE	TYPE	REQUIRED	CLEAR	BEARING	DISTANCE	LAT.	PWR(KW)	INT.	PRO.
CITY			STATE	LICENSEE		<---		LNG.	MAX HAAT	FILE #	
14-	AD044	2	CAD NR	95.7	146.5	198.5	242.16 km	44 29 0	5000.00	---	106.64
	NEW LONDON		WI	WISCONSIN VOICE OF CHRISTI		18.5	150.47 Mi	88 22 30	600.0M		RM8049
	NATIVE TO CH 14, APPLETON, WI										
14-	WSCO	2	CLI YV	95.7	94.3	204.3	190.04 km	44 59 30	200.00	---	51.50
	SURING		WI	NORTHEASTERN WI. CHRISTIAN		24.3	118.09 Mi	88 23 55	189.0M		BLC7840309KE
	HAMSL = 447 M										
14-	DE066	2	CDE NR	95.7	94.3	204.3	190.04 km	44 59 30	5000.00	---	106.64
	SURING		WI	WISCONSIN VOICE OF CHRISTI		24.3	118.09 Mi	88 23 55	600.0M		RM8049
14-	AD920	2	CAD NR	95.7	146.5	198.5	242.16 km	44 29 0	5000.00	---	106.64
	APPLETON		WI	WISCONSIN VOICE OF CHRISTI		18.5	150.47 Mi	88 22 30	600.0M		RM8049
25+	AD018	2	CAD NR	31.4	112.5	186.8	143.85 km	45 15 54	5000.00	---	106.64
	MARINETTE		WI	TRI CITY TELEVISION COMPAN		6.8	89.38 Mi	87 36 51	600.0M		
	RESTR. 18.6KM NORTH										
28-	AL28	2	CAL V	280.8	-280.8	0.0	0.00 km	46 33 0	5000.00	---	106.64*
	MARQUETTE		MI			180.0	0.00 Mi	87 23 36	600.0M		
282	AL060	2	CAL NA	280.8	31.3	184.6	312.11 km	43 45 3	5000.00	---	106.64
	SHEBOYGAN		WI			4.6	193.94 Mi	87 42 52	600.0M		
422	AL063	2	CAL A	95.7	94.6	179.7	190.25 km	44 50 18	5000.00	---	106.64
	STURGEON BAY		WI			359.7	118.22 Mi	87 22 48	600.0M		

05-14-1996

E.H. Munn Jr. &amp; Assoc.

517 278-7339

CH# 392 (Primary)

MARQUETTE MI AVAILABLE CHANNEL STUDY

INTERFERENCE CHECKS WITH NEW MARQUETTE AT N. LAT. 46 33 0 W. LNG. 87 23 36

ZONE = 2

PWR = 5000 K.W.

N.A.A.T = 600 M

CH#	CALL	ZONE	TYPE	REQUIRED	CLEAR	BEARING	DISTANCE	LAT.	PWR(KW)	INT.	PRO.
CITY			STATE	LICENSEE		<---		LNG.	MAX HAAT	FILE #	
24+	AL246	2	CAL	A	119.9	93.5	267.2	213.38 km	46 27 19	5000.00	106.64
IRONWOOD			MI				87.2	132.59 Mi	90 10 11	600.0M	
25+	AD018	2	CAD	NR	95.7	48.2	186.8	143.85 km	45 15 54	5000.00	106.64
MARINETTE			WI	TRI CITY TELEVISION COMPAN			6.8	89.38 Mi	87 36 51	600.0M	
RESTR. 18.6KM NORTH											
32-	AL358	2	EAL	A	95.7	138.4	91.4	234.07 km	46 29 58	5000.00	106.64
SAULT STE. MARIE			MI				271.4	145.44 Mi	84 20 37	600.0M	
342	AP939	2	CAP	DYV	31.4	135.8	239.0	167.20 km	45 46 30	2000.00	78.01
EAGLE RIVER			WI	NORTHWOODS EDUC'L TELEVISI			59.0	103.89 Mi	89 14 55	333.0M	BPCT950912KE
DA> ODD950912D1E a 0 HANSL = 828 M											
342	AL938	2	CAL	NA	31.4	127.8	243.8	159.24 km	45 55 0	5000.00	106.64
EAGLE RIVER			WI	EAGLE RIVER TELEVISION COM			63.8	98.95 Mi	89 14 42	600.0M	
TIVE 07-25-94											
38-	AL273	2	CAL	A	87.7	147.1	90.9	234.79 km	46 31 0	5000.00	106.64
SAULT STE MARIE			ON				270.9	145.89 Mi	84 20 0	600.0M	
392	AL39	2	CAL	V	280.8	-280.8	0.0	0.00 km	46 33 0	5000.00	106.64*
MARQUETTE			MI				180.0	0.00 Mi	87 23 36	600.0M	
Ref F(50-50) 0 dBu= 0 km; AL39 F(50-50) 64 dBu= 0 km											
39-	AL020	2	CAL	A	280.8	21.7	225.8	302.52 km	44 39 9	5000.00	106.64
MARSHFIELD			WI				45.8	187.98 Mi	90 10 24	600.0M	
462	AD919	2	CAD	NR	95.7	111.4	221.2	207.10 km	45 8 54	5000.00	106.64
ANTIGO			WI	NATIVE AMERICAN TELEVISION			41.2	128.69 Mi	89 9 0	600.0M	RM8762
54+	AL275	2	CAL	A	119.9	114.9	90.9	234.79 km	46 31 0	5000.00	106.64
SAULT STE MARIE			ON				270.9	145.89 Mi	84 20 0	600.0M	

05-14-1996

E.H. Munn Jr. &amp; Assoc.

517 278-7339

CH# 512 (Primary)

## MARQUETTE MI AVAILABLE CHANNEL STUDY

INTERFERENCE CHECKS WITH NEW MARQUETTE AT N. LAT. 46 33 0 W. LNG. 87 23 36

ZONE = 2

PWR = 5000 K.W. H.A.A.T = 600 M

CH#	CALL	ZONE	TYPE	REQUIRED	CLEAR	BEARING	DISTANCE	LAT.	PWR(KW)	INT.	PRO.
CITY			STATE	LICENSEE		<---		LNG.	MAX HAAT	FILE #	
36+	WLEFTV	2	ECP YV	119.9	112.2	253.2	232.13 km	45 56 43	1050.00	---	80.42
	PARK FALLS		WI	STATE OF WISC. - EDUC'L. C		73.2	144.24 Mi	90 16 28	445.0M		BPET920221KE HAMSL = 920 M
36+	WLEFTV	2	ELI YV	119.9	112.2	253.2	232.13 km	45 56 43	741.00	---	77.63
	PARK FALLS		WI	STATE OF WISC. - EDUC'L. C		73.2	144.24 Mi	90 16 28	448.0M		BLET433 HAMSL = 920 M
44+	AL961	2	CAL A	95.7	135.7	192.0	231.37 km	44 30 48	5000.00	---	106.64
	GREEN BAY		WI			12.0	143.77 Mi	88 0 24	600.0M		
	TIVE 8-6-84										
442	AL274	2	CAL A	95.7	139.1	90.9	234.79 km	46 31 0	5000.00	---	106.64
	SAULT STE MARIE		ON			270.9	145.89 Mi	84 20 0	600.0M		
512	AL51	2	CAL V	280.8	-280.8	0.0	0.00 km	46 33 0	5000.00	---	106.64*
	MARQUETTE		MI			180.0	0.00 Mi	87 23 36	600.0M		
	Ref F(50-50) 0 dBu= 0 km; AL51 F(50-50) 64 dBu= 0 km										

05-14-1996

E.H. Munn Jr. &amp; Assoc.

517 278-7339

CH# 57Z (Primary)

## MARQUETTE MI AVAILABLE CHANNEL STUDY

INTERFERENCE CHECKS WITH NEW MARQUETTE AT N. LAT. 46 33 0 W. LNG. 87 23 36

ZONE = 2

PWR = 5000 K.W. H.A.A.T = 600 M

CH#	CALL	ZONE	TYPE	REQUIRED	CLEAR	BEARING	DISTANCE	LAT.	PWR(KW)	INT.	PRO.	
CITY			STATE	LICENSEE		<---		LNG.	MAX HAAT	FILE #		
422	AL063	2	CAL	A	119.9	70.3	179.7	190.25 km	44 50 18	5000.00	---	106.64
	STURGEON BAY		WI				359.7	118.22 Mi	87 22 48	600.0M		
50+	AL047	2	EAL	A	95.7	199.5	197.8	295.16 km	44 1 18	5000.00	---	106.64
	OSHKOSH		WI				17.8	183.40 Mi	88 32 42	600.0M		
	TIVE 5-01-85.											
552	AD097	2	CAD	NR	31.4	193.8	221.5	225.21 km	45 1 56	5000.00	---	106.64
	WITTENBERG		WI	SHAWANN COUNTY TELEVISION			41.5	139.94 Mi	89 18 44	600.0M		RM8761
	RESTR. 25.8KM NW											
572	AL57	2	CAL	V	280.8	-280.8	0.0	0.00 km	46 33 0	5000.00	---	106.64*
	MARQUETTE		MI				180.0	0.00 Mi	87 23 36	600.0M		
	Ref F(50-50) 0 dBu= 0 km; AL57 F(50-50) 64 dBu= 0 km											



05-16-1996

E.H. Munn Jr. &amp; Assoc.

517 278-7339

CH# 60 (Primary)

MARQUETTE MI ALTERNATE CHANNELS SCANLAN SITE

INTERFERENCE CHECKS WITH NEW MARQUETTE AT N. LAT. 46 21 10 W. LNG. 87 51 15

ZONE = 2

PWR = 5000 K.W. H.A.A.T = 600 M

CH#	CALL	ZONE	TYPE	REQUIRED	CLEAR	BEARING	DISTANCE	LAT.	PWR(KW)	INT.	PRO.
CITY			STATE	LICENSEE		<---		LNG.	MAX HAAT	FILE #	
45-	WGKU	2	CLI NV	119.9	155.0	118.6	274.88 km	45 10 12	70.80	---	51.18
	VANDERBILT		MI	GRK PRODUCTIONS JOINT VENT		298.6	170.80 Mi	84 45 4	290.0M		BLCT921005KE HAMSL = 617 M
45-	WGKU	2	CAP NV	119.9	155.0	118.6	274.88 km	45 10 12	155.00	---	58.28
	VANDERBILT		MI	GRK PRODUCTIONS JOINT VENT		298.6	170.80 Mi	84 45 4	324.0M		BPCT960130KE HAMSL = 651 M
462	AD919	2	CAD NR	95.7	71.9	217.0	167.60 km	45 8 54	5000.00	---	106.64
	ANTIGO		WI	NATIVE AMERICAN TELEVISION		37.0	104.14 Mi	89 9 0	600.0M		RM8762
552	AD097	2	CAD NR	31.4	154.2	217.7	185.58 km	45 1 56	5000.00	---	106.64
	WITTENBERG		WI	SHAWANN COUNTY TELEVISION		37.7	115.31 Mi	89 18 44	600.0M		RM8761
	RESTR. 25.8KM NW										
572	AL57	2	CAL V	31.4	10.2	58.2	41.64 km	46 33 0	5000.00	---	106.64
	MARQUETTE		MI			238.2	25.87 Mi	87 23 36	600.0M		

### DISCUSSION

This firm was retained by Scanlan Television, Inc., to determine if additional UHF-TV channels are available for allocation in the vicinity of Marquette, Michigan. Channel 19 is listed in the Table of Allotments for use at Marquette. It has been determined that, from the Marquette reference point at NL 46°33'00"; WL 87°23'36", there are at least four (4) additional, non-conflicting channels which meet the spacing requirements of the Rules. Those channels are 28, 39, 51, and 57. Tabulations of the spacings for each channel is included in this report.

At the site applied for by Scanlan Television, Inc., southwest of Marquette at NL 46°21'10"; WL 87°51'15", the following two (2) additional channels could also be added, on a non-conflicting basis, with the channels listed above, located at the city reference point. They are channels 47 and 60. The tabulation of the spacings for these two channels have references to some of the channels proposed at the Marquette reference point.

Therefore, at least six (6) UHF channels could be added to the Table of Allotments in the area of Marquette, MI.

### CERTIFICATION

I hereby certify, under penalty of perjury, that the information contained in this report was prepared by properly trained electronics engineers under the direction of the undersigned and that the contents are true and accurate to the best of my knowledge and belief.

June 24, 1996

  
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